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Nos. 175 and 176

In the Supreme Court of the United States

OCTOBER TERM, 1935

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

E. C. PETERSON

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

L. T. PETERSON

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE PETITIONER

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CITATION

Case:

Guy T. Helvering, Commissioner of Internal Revenue, v. Minnesota Tea Company, No. 174, Oct. Term, 1935 ..... 2, 5

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In the Supreme Court of the United States

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No. 175

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

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No. 176

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 35–43) is reported in 28 B. T. A. 591. The majority and dissenting opinions in the United States Circuit Court of Appeals for the Eighth Circuit are reported in 76 F. (2d) 806.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on March 25, 1935 (R. 54, 55). The petition for writs of certiorari was filed June 25, 1935, and granted October 14, 1935. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the transfer of assets between the Minnesota Tea Company and the Grand Union Company constituted a reorganization within the meaning of clause (A) of Section 112 (i) (1) of the Revenue Act of 1928.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in Appendix A to the brief for the petitioner in *Guy T. Helvering, Commissioner of Internal Revenue* v. *Minnesota Tea Company,* No. 174, present term, filed herewith.

STATEMENT

The facts, as stipulated before the Board of Tax Appeals (R. 18–21), are substantially as follows:

The respondents herein are individuals residing at Duluth, Minnesota (R. 18).

During the taxable year 1928 the entire issued capital stock, 1,517 shares, of the Minnesota Tea Company, a corporation, was held as follows (R. 18):

	Shares
E. C. Peterson	702
A. F. Peterson	113
L. T. Peterson	702

These shares were acquired by the respective stockholders more than two years prior to August 23, 1928 (R. 18).

On August 23, 1928, the said Minnesota Tea Company transferred its assets (except those transferred to Peterson Investment Company (R. 21)) to Grand Union Company, another corporation, and received in exchange therefor 18,000 shares of the common capital stock (represented by voting-trust certificates) of said Grand Union Company, plus the sum of $426,842.52 in cash. No liabilities of Minnesota Tea Company were assumed by the Grand Union Company. (R. 18.)

The transfer was effected in accordance with the option and resolutions marked Exhibits "A" to "E", which appear in the record at pages 21 to 35, inclusive.

The basis to the Minnesota Tea Company of the assets so transferred to Grand Union Company, for computing gain or loss, was $254,646.62. The Minnesota Tea Company, immediately upon the receipt of the said cash in the amount of $426,842.52, paid this cash to its said stockholders, in proportion to their stockholdings, and at the time of said payment the said stockholders assumed, in proportion to their stockholdings, the liabilities of the said Minnesota Tea Company amounting to $106,471.73, and thereafter the stockholders duly discharged and paid said liabilities so assumed. (R. 19.)

The amounts of said payments to the respective stockholders, and the amounts of the liabilities respectively assumed, were as follows (R. 20):

Stockholders	Cash received	Liabilities assumed	Net receipts
E. C. Peterson	$197,806.93	$49,270.37	$148,536.56
A. F. Peterson	31,830.00	7,930.00	23,900.00
L. T. Peterson	197,806.93	49,270.37	148,536.56
	426,843.86	106,471.73	320,372.13

The amount of the tax due from the respondents, two of the above-named stockholders of the Minnesota Tea Company, depends solely upon whether the transfer of the properties of the Minnesota Tea Company to the Grand Union Company was a reorganization within the meaning of the Revenue Act.

Before the Board these cases were consolidated with that of *Minnesota Tea Company* v. *Commissioner*, 28 B. T. A. 591, and all of the cases were decided in one opinion (R. 35). The Board of Tax Appeals held that the transaction was not a reorganization. In separate opinions the Circuit Court of Appeals reversed both the *Minnesota Tea Company* case (76 F. (2d) 797) and the *Peterson* cases (76 F. (2d) 806).

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in reversing the decision of the Board of Tax Appeals and remanding these cases for further consideration of the tax liability upon the basis that the transaction

between the Minnesota Tea Company and the Grand Union Company was a reorganization within the meaning of the statute.

ARGUMENT

Respondents are stockholders of the Minnesota Tea Company and the tax liabilities asserted in these cases depend entirely upon the decision of this Court in *Guy T. Helvering, Commissioner of Internal Revenue*, v. *Minnesota Tea Company*, No. 174, present term.

There is no separate question to be decided in these cases and the argument in support of the Government's contentions is fully presented in No. 174. Accordingly, we here refer to the brief filed in that case and ask that the argument therein be incorporated herein by reference.

CONCLUSION

For the reasons set forth in the brief for petitioner in No. 174, we respectfully submit that the decisions of the Circuit Court of Appeals in these cases should be reversed.

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NOVEMBER 1935.

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